

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
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Application by SBC Communications Inc., )  
Southwestern Bell Telephone Company, and )  
Southwestern Bell Communications )  
Services, Inc., d/b/a Southwestern Bell )  
Long Distance for Provision of In-Region, )  
InterLATA Services in Texas )

CC Docket No. 00-65

REPLY COMMENTS OF PILGRIM TELEPHONE, INC.

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## SUMMARY

The comments filed in response to the Supplemental Application of SBC Communications Inc. illustrate that, as SBC struggles to patch together its case for authority to provide long distance service in the State of Texas, it is only succeeding in illuminating new problems while continuing to ignore old ones.

SBC claims in its Supplemental Application that it has been successful in providing non-discriminatory access to its Operations Support Systems, and that it has taken sufficient measures to enable competitive local exchange carriers to integrate SBC's OSS with their own systems, thus minimizing rejected orders and facilitating an optimum flow through of orders placed by competitive LECs.

But commenters tell a different story, uncovering new problems associated with SBC's OSS and demonstrating that SBC's hasty efforts to cobble together OSS processes that adequately serve competitive carriers' needs are consistently falling short of the mark. Pilgrim joins with these commenters in arguing that the Commission should not give any favorable consideration to SBC's Application until issues regarding the accuracy of information accessible through OSS, and regarding the timeliness of access provided to competitive carriers, are satisfactorily resolved.

At the same time, SBC continues to ignore problems raised by Pilgrim in the initial round of comments in response to SBC's original Application in January. Pilgrim and other casual calling service providers require real-time access to SBC customers' billing name and address information and 900 call blocking instructions in order to effectively provide competitive

services in Texas. SBC maintains and controls this customer information in databases and systems constructed and operated through the funding of SBC's monopoly ratepayers.

Access to SBC's call-related databases, as well as access to information available through OSS, will serve important pro-competitive objectives in Texas by enabling casual calling service carriers to provide their services efficiently and to bill and collect for their services, but SBC has yet to make clear that casual calling service providers will have non-discriminatory and sufficient access to these resources. The Commission should insist, as a prerequisite to any favorable action on SBC's Application, that SBC must demonstrate that casual calling providers have access to BNA, 900 blocking information, and other similar information that is equivalent to the access to such information available to SBC for its own business operations. Such a requirement will serve consumers and advance congressional and Commission goals by fostering competition in the Texas local exchange marketplace.

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InterLATA Services in Texas	)	

**REPLY COMMENTS OF PILGRIM TELEPHONE, INC.**

Pilgrim Telephone, Inc. (Pilgrim), by counsel, hereby submits its reply comments in response to the Public Notice released by the Common Carrier Bureau on April 6, 2000,<sup>1</sup> regarding the above-captioned proceeding and opposing the Supplemental Application<sup>2</sup> of SBC Communications Inc. (SBC) and its subsidiaries Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long

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<sup>1</sup> Public Notice, "Comments Requested on the Application by SBC Communications Inc. for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Texas," DA 00-750, released Apr. 6, 2000.

<sup>2</sup> Letter from James D. Ellis, Paul K. Mancini, & Martin E. Grambow, SBC, to Magalie Roman Salas, Secretary, FCC, Apr. 5, 2000 ("SBC Supplemental Application" or "Supplemental Application"). The initial application was submitted by SBC on January 10, 2000. *See* Letter from Austin C. Schlick to Magalie Roman Salas, Secretary, FCC, Jan. 10, 2000 ("SBC Application" or "Application"). *See also* Public Notice, "Comments Requested on Application by SBC Communications Inc. for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of Texas," DA 00-37, released Jan. 10, 2000.

Distance (SBCS) for authorization to provide in-region, inter-Local Access and Transport Area (LATA) service in the State of Texas, pursuant to Section 271 of the Communications Act of 1934 (Act).<sup>3</sup>

## **I. INTRODUCTION**

Pilgrim is an interstate, interexchange carrier providing casual access, common carrier services,<sup>4</sup> including collect and calling card casual access common carrier services, and various information and enhanced services, including pay-per-call services.<sup>5</sup> Among the information and enhanced services Pilgrim provides are telemessaging and voice mail services, group access bridging, bulletin board services, and access to these various services.

Providers of casual calling services have the potential to provide a range of competitive services in the local exchange marketplace in Texas, but the growth of this competition is dependent in part upon SBC's provision of sufficient and timely access to customer and billing information acquired and maintained by SBC in its capacity as a monopoly provider of local exchange service. Casual calling service providers need access to this SBC information in order to bill and collect efficiently for their services. It is impractical for these service providers to

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<sup>3</sup> 47 U.S.C. § 271.

<sup>4</sup> Pilgrim currently provides presubscribed 1+ services only in the eastern LATA in the Commonwealth of Massachusetts.

<sup>5</sup> Pay-per-call services are those services that are subject to regulation under Section 228 of the Act, 47 U.S.C. § 228, and Sections 64.1501 through 64.1512 of the Commission's Rules, 47 C.F.R. §§ 64.1501-64.1512.

maintain their own databases to house and update this information because they do not necessarily have an ongoing subscriber-provider relationship with SBC customers who place casual calls over their networks.

SBC has argued vigorously in this proceeding that its entry into the long distance marketplace in Texas will serve the goal of Congress and the Commission to promote a greater degree of competition in that marketplace. Pilgrim believes that it is critical to recognize that an even more important and difficult challenge facing the Commission is to ensure that SBC's long-enjoyed monopoly in the local exchange markets of Texas gives way to a new era of competition, so that consumers in Texas benefit from the choices that competition can bring to the local exchange. This proceeding, of course, can play a pivotal role in promoting competition in both long distance and local markets in Texas because the Commission must bar SBC from stepping onto the long distance playing field if the Commission determines that SBC has not taken adequate measures to enable new entrants to enter local exchange markets.

One part of the Commission's decision, in Pilgrim's view, should be an assessment of whether SBC has acted sufficiently to give casual calling providers the tools they need to offer their services in Texas markets. In this regard, as Pilgrim will demonstrate in the following sections, SBC's Supplemental Application is deficient in two respects. First, although SBC claims that it has taken steps to integrate its Operations Support Systems (OSS) pre-ordering and ordering functions with systems operated by competitive local exchange carriers (LECs), Pilgrim agrees with commenters who complain, for example, that there are discrepancies and inaccuracies in customer information maintained in different SBC customer information



databases accessible through OSS, and that competitive LECs are prevented from accessing SBC's OSS in a timely manner. These OSS deficiencies, if not corrected, would seriously hamper the business activities of competitive LECs.

Second, although access to OSS could serve as an effective alternative by which casual calling service providers would be able to obtain SBC customer and billing information, SBC has failed to address in its Supplemental Application the steps it has taken to ensure that casual calling service providers have been furnished with non-discriminatory access to OSS. SBC should be required to demonstrate, for example, that casual calling service providers can gain access through OSS to billing name and address (BNA) and 900 blocking information, in the same manner that SBC itself accesses this information for its own business purposes.

**II. SBC'S SUPPLEMENTAL APPLICATION FALLS FAR SHORT OF PROVIDING COMPETING CARRIERS WITH SUFFICIENT MEANS TO OBTAIN CUSTOMER AND BILLING INFORMATION**

SBC's Supplemental Application misses the mark once again in complying with the requirements of the competitive checklist contained in Section 271(c)(2)(B) of the Act.<sup>6</sup> SBC's last minute attempt to avoid denial of its initial Application does offer some interesting promises regarding the provision of OSS to competing carriers. But Pilgrim agrees with other commenters that these promises of future actions do not go far enough and fail to demonstrate that SBC is meeting the requirements of the competitive checklist today. In particular, Pilgrim believes that

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<sup>6</sup> 47 U.S.C. § 271(c)(2)(B).

SBC has failed to demonstrate that the access it provides to OSS will meet the needs identified by Pilgrim for the provision of competitive casual calling services.

**A. SBC's Supplemental Application Fails To Address Competing Carriers' Needs for Customer and Billing Information**

As Pilgrim explained in its initial comments regarding SBC's Application,<sup>7</sup> carriers attempting to enter the local exchange market in Texas, particularly carriers offering casual calling services, require access to certain customer information such as real-time BNA, real-time 900 blocking information, and billing and collection services. SBC's Application failed to demonstrate that it was adequately providing these services to competitors, and therefore failed to demonstrate that SBC had complied with the competitive checklist.

SBC's Supplemental Application offers no cure for the problems in its original filing with respect to customer and billing information and services. Although SBC's Supplemental Application offers new promises regarding OSS that may help to meet the needs of competitors offering casual calling services, this new filing also fails to adequately respond to the concerns raised in Pilgrim's original comments.

SBC's Supplemental Application makes several representations regarding non-discriminatory access to its OSS and promises future efforts to aid competitive LECs in using SBC's OSS. Specifically, SBC acknowledges that the ability to integrate its pre-ordering and

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<sup>7</sup> See, e.g., Comments of Pilgrim Telephone, Inc., CC Docket No. 00-4, filed Jan. 31, 2000 (Pilgrim First Round Comments) at 4.

ordering systems with competitive LEC systems is a factor in ensuring non-discriminatory reject rates and flow through.<sup>8</sup> SBC claims that some competitive LECs have been able to integrate SBC's pre-ordering and ordering functions.<sup>9</sup> SBC also indicates that it has retained GE Global Exchange Services to assist competitive LECs in defining the appropriate architecture and strategy for using and integrating SBC's interfaces. Upon a competitive LEC request, SBC says that it will fund a two-week consulting engagement with GE Global Exchange Services.<sup>10</sup>

In addition, SBC asserts that it is changing its own systems to reduce ordering errors. Thus, an end user address is no longer required when converting an SBC retail or resale customer to an unbundled network element (UNE) based service for basic loop, port, and loop with port request types, because SBC will itself retrieve the address for the conversion process.<sup>11</sup>

Although SBC discusses access to OSS to support its Supplemental Application, SBC implicitly admits that it has not been providing adequate information to competitive LECs regarding access to OSS. Otherwise, SBC would not be touting a new round of OSS workshops

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<sup>8</sup> SBC Supplemental Application at 6 (citing Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, released Dec. 22, 1999 (*Bell Atlantic New York Order*), at para. 137).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.*

for competitive LECs<sup>12</sup> or offering to hire outside consultants. Pilgrim believes that these new commitments by SBC are a step in the right direction, and Pilgrim would like the opportunity to test some of these new programs. But these announced initiatives cannot hide the fact that, to date, competitive LECs have not received non-discriminatory access to SBC's OSS.

Before the Commission grants SBC's Supplemental Application, there needs to be stronger evidence that SBC has addressed the comments and concerns of all competitive LECs, including those providing casual calling services. Also, SBC needs to demonstrate that its recent changes regarding OSS actually solve some of the current problems experienced by competitive LECs so that SBC provides competitive LECs the type of access that they need.<sup>13</sup> So far, the evidence provided by commenters suggests that SBC is not meeting its checklist obligations.

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<sup>12</sup> *Id.*

<sup>13</sup> The Commission has explained that promises of future performance have no probative value in demonstrating present compliance with Section 271. *See* Application of BellSouth Corporation, BellSouth Telecommunications Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, para. 56 n.148 (1998); Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, paras. 55, 179 (1997); Application of BellSouth Corporation, *et al.* Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, para. 38 (1997).

**B. Commenters Have Illustrated That SBC's Promises Regarding Access to OSS Pre-Ordering and Ordering Functions Are Not Adequate, Even If SBC Were Successful in Implementing Them**

Throughout the pendency of SBC's Texas 271 Application, competitive LECs have argued that SBC does not provide non-discriminatory access to OSS and therefore SBC's Application does not comply with the competitive checklist. Pilgrim agrees with the concerns expressed by other commenters in the latest round of comments in this proceeding.

Several commenters address concerns regarding discrepancies in the information contained in different SBC databases that are accessible through OSS.<sup>14</sup> Some commenters argue that, even if SBC populates the address field in the ordering process, it will not solve the problem of incorrect database information needed for other OSS processes.<sup>15</sup> For example, CompTel claims that this modification will not correct service outages resulting from missing or incorrect information contained in SBC's customer service record.<sup>16</sup> As explained in Pilgrim's initial comments, BNA information is needed in real time or near real time.<sup>17</sup> If this information is

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<sup>14</sup> See, e.g., CompTel Comments at 5; MCI WorldCom Comments at 14-15; Sprint Comments at 44-45; TRA Comments at 15.

<sup>15</sup> See, e.g., AT&T Comments at 52; MCI WorldCom Comments at 16-18.

<sup>16</sup> CompTel Comments at 5.

<sup>17</sup> See Pilgrim First Round Comments at 9-10.

inaccurate, or there are discrepancies in different databases, there will be a significant impact on the services that Pilgrim can offer to casual calling customers.

In addition, Pilgrim would like to integrate information from SBC's OSS databases, into Pilgrim's own computerized ordering functions. Commenters, however, describe the unparsed format for address information, for example, as a reason why integration between SBC's own systems is not possible.<sup>18</sup> The uncertain accuracy of the information received from SBC's OSS databases, as well as the difficulties involved in attempting to integrate formats, makes it risky for competitive carriers to embark upon such integration tasks and threatens to make their operations less efficient than SBC's operations, since SBC's own OSS functions are fully integrated.

Pilgrim is particularly concerned about competitive LEC claims that SBC's OSS is available only during limited hours.<sup>19</sup> While such an approach might be minimally acceptable for those aspects of OSS that directly involve placing an order, Pilgrim would need information contained in OSS databases on a full 24-hour basis, each day of the week. It would not be practical for Pilgrim to stop providing casual calling services during the portions of the day that SBC shuts down access to OSS.

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<sup>18</sup> See, e.g., AT&T Comments at 51-52; MCI WorldCom Comments at 8-13; Sprint Comments at 44.

<sup>19</sup> See, e.g., MCI WorldCom Comments at 26; TRA Comments at 15; Z-Tel Comments at 4.

**III. SBC SHOULD BE REQUIRED TO DEMONSTRATE THAT IT IS PROVIDING SUFFICIENT ACCESS TO CUSTOMER AND BILLING INFORMATION AS A PRECONDITION TO THE APPROVAL OF ITS APPLICATION**

SBC, in recounting its efforts to clear the path for approval of its Application, claims that “[h]undreds, if not thousands, of issues have been resolved to the apparent satisfaction of all parties.”<sup>20</sup> Pilgrim, however, finds another SBC observation to be more to the point, namely, that “[n]othing speaks more eloquently than the facts.”<sup>21</sup> And the fact is that the Supplemental Application continues the deficiencies of the Application by failing to adequately address or resolve issues regarding the ability of casual calling service providers to access SBC customer and billing information in a manner sufficient to ensure efficient and effective billing and collection for these services.

**A. Casual Calling Service Providers Need Effective Access to SBC’s Customer and Billing Information in Order To Provide Competitive Services**

Access to SBC’s customer and billing information is critical for providers of casual calling services because this information assists these service providers in transmitting calls and in billing and collecting for their services. Although the provision of billing and collection services by SBC for casual calling services is the most effective solution to the billing and collection problems posed by casual calling traffic,<sup>22</sup> non-discriminatory and effective access to

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<sup>20</sup> SBC Supplemental Application at 1.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> See note 23, *infra*.

customer and billing information through SBC's call-related databases or through SBC's OSS would be an important step in meeting the billing and collection needs of casual calling service providers. Unfortunately, neither the Application nor the Supplemental Application provides any confidence that SBC is committed to taking these steps.

**1. Real-Time Access to Call-Related Databases Would Assist Casual Calling Service Carriers in Meeting Customer Needs and in Billing and Collecting for Their Services**

Pilgrim has already demonstrated the importance of requiring SBC to provide sufficient access to its customer and billing information, and we therefore will not reiterate these arguments in any detail here.<sup>23</sup> Suffice it to say, by way of summary, that the provision of real-time access to SBC's call-related databases is important to casual calling service providers because real-time access to the information maintained in these databases improves call routing and completion, reduces call transmission costs, and enhances efforts to bill and collect for casual calling services. Importantly, consumers are better served if casual calling providers are given real-time access to SBC's call-related databases, and they are better protected because service providers can accurately identify and accommodate customers' call blocking instructions if the providers have real-time access to these instructions in SBC-controlled databases.

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<sup>23</sup> See Pilgrim First Round Comments. Pilgrim has also demonstrated that SBC's refusal to provide billing and collection services to competing carriers is harmful to new entrants and constitutes a failure by SBC to comply with the competitive checklist. *See id.* at 7, 11-13.



Requiring SBC to provide real-time access to its call-related databases also serves the Commission's broader competitive objectives. For example, "dial around" long distance service providers would be aided by receiving sufficient access to SBC's call-related databases, because this would enable these carriers to handle this type of casual calling traffic efficiently and economically, and to bill and collect with a minimum level of call processing errors.

SBC's failure in its original Application and in its Supplemental Application to demonstrate that it will provide real-time access to its call-related databases is therefore problematic for casual calling service providers, is also detrimental to consumers, and is contrary to the pro-competitive goals of the Section 271 requirements.

**2. Access to SBC's OSS Could Serve As An Alternative Means To Enable Casual Calling Service Providers To Obtain Customer and Billing Information**

In addition to the importance of real-time access to call-related databases to facilitate billing and collection for casual calling services, Pilgrim also believes that access to customer records through SBC's OSS could serve as an effective alternative means of facilitating accurate and effective billing for casual calling services. Although SBC claims in the Supplemental Application that it is providing non-discriminatory access to OSS,<sup>24</sup> it does not address the manner and extent to which casual calling service providers are being given sufficient means to access SBC's customer and billing information through OSS. The Commission should require

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<sup>24</sup> SBC Supplemental Application at 5.

explicit commitments from SBC regarding the steps it will take to ensure that such access is provided to casual calling service providers, before the Commission takes any affirmative action regarding SBC's Application or Supplemental Application under Section 271 of the Act.

It is Pilgrim's view that it is technically feasible for SBC to make both BNA and 900 blocking data accessible through its OSS. For example, Pilgrim believes that BNA information for each SBC end user customer is contained on a Customer Service Record (CSR), which should be accessible through OSS. Unless SBC is in a position to demonstrate that BNA and 900 blocking data cannot be accessed through OSS, it should be required by the Commission to provide Pilgrim and other casual calling service providers with access to OSS, for the purpose of enabling such service providers to access and utilize BNA and 900 blocking information.

An important aspect of this access is that it must be provided in a timely and non-discriminatory manner. A failure to provide this information in a timely manner will impair the ability of casual calling service providers to conduct business, will increase their costs of providing services to their customers, and will adversely affect their ability to meet their consumer protection objectives as well as regulatory consumer protection standards and requirements. SBC is obligated to provide non-discriminatory access as one means of preventing SBC from seeking to unfairly maintain its market dominance.<sup>25</sup> An explicit requirement imposed

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<sup>25</sup> See Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), which provides that incumbent LECs have "[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable,

by the Commission in this proceeding would serve to give concrete definition to obligations that SBC should already be expected to meet as part of its responsibilities as an incumbent LEC under the Act.

The timely provision of BNA and 900 blocking information should be readily achievable by SBC. The provision of access to SBC's electronic interfaces should provide casual calling service providers with "on line" access to BNA and 900 blocking information in a sufficiently timely manner to meet their service provisioning needs.<sup>26</sup> Pilgrim believes that, through these interfaces, casual calling service providers would have the ability to access the Customer Record Information System (CRIS) database and to review individual CSRs. The Commission therefore should require SBC to confirm the timeliness of access to information in OSS that can be accomplished by casual calling service providers through these interfaces.

The issue of timeliness is important to Pilgrim and other casual calling service providers both in the case of BNA information and 900 blocking information. SBC, however, may object to a requirement that it must provide competing carriers with access to BNA based on the

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and nondiscriminatory in accordance with the terms and conditions of the agreement [between the incumbent LEC and the requesting carrier] and the requirements of this section and Section 252."

<sup>26</sup> Other incumbent LECs utilize such interfaces. For example, BellSouth has indicated that it makes available to competitive carriers the Telecommunications Access Gateway (TAG) and Local Exchange Navigation System (LENS) electronic interfaces to provide timely access to OSS. It appears to be the case that SBC operates similar interfaces. For a discussion of SBC's capabilities, *see* page 16, *infra*.

argument that the BNA relates to SBC customers and is not needed by competing carriers in connection with the carriers switching customers from SBC. This argument, however, overlooks the fact that Pilgrim and other casual calling service providers need timely access to BNA information, for example, to verify whether an SBC subscriber placing a call to the casual calling service provider is actually authorized to initiate service, or to change the terms or parameters of service received from the provider.

Timeliness is equally important in the case of 900 blocking. Pilgrim has no interest in routing calls to 900 pay-per-call numbers in cases in which the subscriber to the calling line has requested that calls to 900 numbers on that line should be blocked. In order for Pilgrim to follow such an instruction, in the case of casual calls originated by SBC customers on Pilgrim's network, Pilgrim needs timely access to 900 blocking information maintained by SBC.

Chairman Kennard, in commenting about SBC's announced intention to file a Supplemental Application, stated his belief that SBC needed to address "the integration of operations support systems used by competitors to obtain unbundled elements."<sup>27</sup> Taking its cue from the Chairman's observation, SBC claims in its Supplemental Application that the "supplemental filing goes much further, and should leave no room for doubt about SBC's satisfaction of all legitimate requirements regarding OSS integration, rejects, and flow through

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<sup>27</sup> "Statement of FCC Chairman William E. Kennard on SBC 271 Filing," FCC News Release, Apr. 3, 2000, at 1.

[of requesting carriers' orders in SBC's systems]."<sup>28</sup> While Pilgrim takes issue with some of the claims made by SBC and agrees with other commenters that further steps should be taken to ensure the efficient utilization by competing carriers of SBC's pre-ordering, ordering, and provisioning systems,<sup>29</sup> a more fundamental problem posed by the Supplemental Application (as well as the SBC Application) for casual calling service providers is the fact that SBC has failed to make clear its commitment to provide casual calling service providers with non-discriminatory access to its OSS.

SBC described in its Application various electronic interfaces which appear to provide the means necessary for Pilgrim and other casual calling service providers to obtain BNA, 900 blocking data, and other related customer and billing information. For example, the Easy Access Sales Environment (EASE) electronic interface integrates ordering and pre-ordering functions into a single application, is available on a "real-time" basis, and "is the same award-winning on-line system SWBT's retail service representatives use to accomplish pre-ordering tasks . . . ."<sup>30</sup> Verigate, a graphical user interface operating on Windows™, is another example of an electronic interface that provides real-time access to the pre-ordering capabilities of SBC's OSS.<sup>31</sup>

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<sup>28</sup> Supplemental Application at 6.

<sup>29</sup> See Section II, *supra*.

<sup>30</sup> Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA Services in Texas, filed Jan. 10, 2000, at 82.

<sup>31</sup> *Id.* at 83.

Neither the Application nor the Supplemental Application, however, makes clear whether casual calling service providers can utilize these interfaces for purposes of obtaining BNA, 900 blocking, and other customer and billing information. The Commission should require SBC to confirm that casual calling service providers in fact will be provided with such access on a non-discriminatory basis, so that such providers will have the opportunity to access and utilize billing and customer information in the same manner as other competing carriers as well as SBC's own retail operations.

**B. Implementation of the Commission's Detariffing Order Will Increase the Need for Providers of Casual Calling Services To Be Provided Sufficient Access to SBC's Customer and Billing Information**

The Commission's decision in the *Detariffing Order*<sup>32</sup> to detariff interstate, domestic, interexchange services of non-dominant carriers became effective on May 1, 2000, and the Common Carrier Bureau has announced a nine-month transition period to the new detariffed regime.<sup>33</sup> As the Court of Appeals acknowledged in its decision, commenters in the Commission

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<sup>32</sup> Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 20730 (1996) (*Detariffing Order*), *aff'd*, MCI WorldCom v. FCC, No. 96-1459, slip op. (D.C.Cir. Apr. 28, 2000) (*MCI WorldCom*).

<sup>33</sup> See Public Notice, "Domestic, Interexchange Carrier Detariffing Order Takes Effect; Common Carrier Bureau Implements Nine-Month Transition Period; Comment Sought on Modifications to Transition Plan," DA 00-1028, May 9, 2000.

proceeding had argued against detariffing because, *inter alia*, the inability to file tariffs would make the offering of casual calling options more difficult.<sup>34</sup>

One of the reasons for this difficulty is the fact that there may not be any privity of contract between a casual calling carrier and a customer to whom it is providing service in the absence of a tariff. The Cellular Telecommunications Industry Association (CTIA) had suggested in the Commission's *Calling Party Pays* proceeding,<sup>35</sup> before the *Detariffing Order* was affirmed, that regular tariff filings under Section 203 of the Act<sup>36</sup> or "informational tariff" filings under Section 211 of the Act<sup>37</sup> might be an effective means of ensuring an enforceable agreement or an implied-in-fact contract between a casual caller and a Commercial Mobile Radio Service (CMRS) carrier seeking to charge the calling party for calls completed to the CMRS carrier's subscribers.<sup>38</sup> Although the Commission has not yet addressed CTIA's concerns in the *Calling*

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<sup>34</sup> *MCI WorldCom*, slip op. at 7. We note that one type of casual calling — interstate, domestic, interexchange direct-dial services to which end users gain access by dialing a carrier's access code — has been excepted by the Commission from its mandatory detariffing requirement. See Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15014, paras. 10, 32 (1997). See also Pilgrim First Round Comments at 4 n.8.

<sup>35</sup> *Calling Party Pays Service Option in the Commercial Mobile Radio Services*, WT Docket No. 97-207 (*Calling Party Pays*).

<sup>36</sup> 47 U.S.C. § 203.

<sup>37</sup> 47 U.S.C. § 211.

<sup>38</sup> See CTIA Comments, filed Dec. 16, 1997, *Calling Party Pays Service Option in the Commercial Mobile Radio Services*, WT Docket No. 97-207, Notice of Inquiry, 12 FCC Rcd 17693 (1997), at 23-27.

*Party Pays* proceeding, it has suggested “that carriers have reasonable options other than tariffs to establish contractual relationships with casual callers that would legally obligate such callers to pay for their services . . . .”<sup>39</sup>

Regardless of whether the Commission is correct in its view that arrangements other than tariffs can ensure a customer-provider contractual relationship between callers and casual calling service providers, the fact remains that depriving casual calling service providers of the right to file tariffs for their interstate, interexchange services creates potential uncertainty regarding the rights and obligations of both customers and carriers in the context of casual calling services. In these circumstances, the importance of billing and collecting accurately, and of honoring calling parties’ blocking requests, is accentuated. Thus, one effective remedy to the uncertainty and need for caution brought to the casual calling market by the Commission’s detariffing action is to ensure that casual calling service providers have the necessary tools to meet these objectives of accurate billing and the recognition and implementation of call blocking requests.

The achievement of these objectives will benefit both consumers and the competitive marketplace. For these reasons, it is important that the Commission act in this proceeding to require, as a prerequisite to any grant of SBC’s Application, that SBC demonstrate its commitment to permitting real-time access to BNA, call blocking information, and other

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<sup>39</sup> Calling Party Pays Service Option in the Commercial Mobile Radio Services, WT Docket No. 97-207, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137, released July 7, 1999, at para. 51 (citing Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Order on Reconsideration, 12 FCC Rcd 15014, para. 28 (1997)).



customer and billing information needed by casual calling service providers in connection with their provision of telecommunications services.

**C. Other Incumbent LECs Have Taken Effective Steps To Provide Competitive Carriers with Billing and Collection Services and with Sufficient Access to Customer and Billing Information**

The deficiencies in SBC's Application can be contrasted with steps taken by other incumbent LECs that have opened their markets and have addressed some of the needs of casual calling service providers. Bell Atlantic, for example, in its quest for authority to provide long distance service in New York pursuant to Section 271 of the Act, conducted itself in a much more responsible, constructive, and reasonable manner than SBC has done.

In granting Bell Atlantic's application in New York, the Commission explained that its action "clearly demonstrates that when a [Bell Operating Company] takes the steps required to open its local markets to full competition, the company will be rewarded with section 271 authority to enter the long distance market."<sup>40</sup> In making this finding, the Commission analyzed whether Bell Atlantic met the non-discrimination standard for each OSS function.<sup>41</sup> The Commission specifically concluded that Bell Atlantic provides non-discriminatory access to OSS

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<sup>40</sup> *Bell Atlantic New York Order* at para. 15.

<sup>41</sup> The Commission first determined whether Bell Atlantic deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether Bell Atlantic was adequately assisting competing carriers to understand how to implement and use all the OSS functions available to them. Then the Commission assessed whether the OSS functions that Bell Atlantic deployed were operationally ready, as a practical matter. *Id.* at para. 87.

pre-ordering functions because it enables carriers to integrate pre-ordering functions, and makes available to requesting carriers all the functionality that it provides to itself.

The Commission also found that “Bell Atlantic also shows, through response times and interface availability performance data and third-party testing, that its pre-ordering interfaces and systems are operationally ready and capable of sustaining reasonably foreseeable demand volumes.”<sup>42</sup> SBC cannot come close to meeting these standards with its inaccurate databases, address information in unusable formats, and access available only during limited hours of the day.

Bell Atlantic’s other actions also support the view that it is offering interconnection and access to network elements on a non-discriminatory basis. SBC’s interconnection agreements in Texas offer no similar provisions. Bell Atlantic has various provisions in current interconnection agreements relating to the provision of billing and collection services that assist in opening up local exchange markets to competitors providing casual calling services. For example, with respect to billing and collection for information services, certain Bell Atlantic agreements contain provisions under which Bell Atlantic provides billing and collection services to competitive carriers for casual calls that are originated by Bell Atlantic customers and terminated

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<sup>42</sup> *Id.* at para. 128.

on the competitive carriers' networks.<sup>43</sup> In addition, Bell Atlantic provides a standard billing and collection agreement for interexchange carriers and casual calling service providers.<sup>44</sup>

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<sup>43</sup> See Bell Atlantic-Covad Interconnection Agreement in New York, effective Dec. 24, 1999. The Agreement provides, in pertinent part:

Information Services (*e.g.*, "976" calls). For information services, the Party ("Originating Party") shall bill and collect such information provider charges and remit an amount equal to such charges to the Party ("Terminating Party") to whose information platform the Information Services Traffic terminated less the Information Services Billing and Collection Fee set forth in Part IV. Except for Local Services Calls, upon request by the Terminating Party, the Originating Party shall provide originating call detail in unrated EMR format to the Terminating Party, at the charges specified in Part IV. Where such originating call detail is received, the Terminating Party shall provide the Originating Party with a rated record. The Originating Party shall pay the Terminating Party in full regardless of uncollectible items; provided, however, for each of its Customer's lines Covad shall receive the forgiveness policy of two credits for each customer line after which: a) when the Originating Party provides its own local switch, the Originating Party will block all such Information Services calls originated by its customer, b) when Covad provides service via unbundled Network Elements or through resold Local Services, Covad will request blocking and Bell Atlantic will provide blocking service at the prices set forth in Part IV.

*Id.* at Part IV.B., Sec. 7, p. 158.

<sup>44</sup> These billing and collection practices reflect policies followed by Bell Atlantic that are in sharp contrast to those enforced by SBC. For example, earlier this month a representative of SBC advised a Pilgrim representative that SBC was not willing to provide any billing and collection services to Pilgrim for any type of calls, including collect calls, originated by SBC's customers and terminated on Pilgrim's network.

**IV. SBC'S FILING OF ITS SUPPLEMENTAL APPLICATION IS  
PROCEDURALLY UNFAIR BECAUSE IT UNDULY BURDENS THE  
COMMISSION'S ADMINISTRATIVE PROCESSES AND FORCES  
FURTHER COMMENT ROUNDS AFTER THE RECORD SHOULD  
BE CLOSED**

The device by which SBC has sought to rekindle the prospect of gaining approval of its long distance service aspirations in Texas, by filing a Supplemental Application after interested parties have pointed out the deficiencies in SBC's initial Application, is procedurally unfair and should not be countenanced by the Commission in the future.

SBC admits in its Supplemental Application that some parties, including the Department of Justice, "continue to have concerns about the evidence currently in the record."<sup>45</sup> SBC argues that the remedy for its problem is to submit new evidence,<sup>46</sup> even though this new evidence cannot receive full consideration before the Commission's deadline for decision in the proceeding.<sup>47</sup> As it surveys the procedural quandary created by its insistence on filing supplemental materials, SBC advances the notion that "it would serve no good purpose to start the process all over again when the current application is on file and has been the subject of such extensive briefing and consideration."<sup>48</sup> SBC then caps its procedural argument by noting that

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<sup>45</sup> SBC Supplemental Application at 1.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 2.

<sup>48</sup> *Id.*

“[c]ommencing an entirely new proceeding would only cause needless delay and lead the parties to refile hundreds of thousands of pages of material that is already in the record.”<sup>49</sup>

In rendering this survey of the procedural landscape, SBC blinks the fact that its eleventh hour filing of a Supplemental Application with the Commission, while intended to serve SBC’s own purposes, disserves both the Commission and parties participating in the proceeding. When SBC filed its Application on January 10, 2000, it began a process and it started a 90-day clock for Commission decision.<sup>50</sup> Turning on the switch of that clock was a matter within SBC’s complete control and discretion. SBC was not obligated to begin its campaign to offer long distance service in Texas on that date or any other date.

Given the fact that the invocation of the Commission’s processes was within the sole and complete control of SBC, procedural fairness would seem to require that SBC be made to face reasonable procedural consequences that should attach to its filing. Specifically, since SBC had unlimited time at its disposal for purposes of making its case that it should be authorized to provide long distance service in Texas, once it filed that case with the Commission in January the outcome should be made to stand or fall on the strength of that case. SBC was representing, on January 10, that the state of local competition in Texas on that date, as well as the status of

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<sup>49</sup> *Id.*

<sup>50</sup> See Section 271(d)(3) of the Act, 47 U.S.C. § 271(d)(3).

SBC's efforts to meet the competitive checklist requirements of the Act as of that date, warranted a grant of its Application.

A reasonable procedure would then entail a decision on a record consisting of SBC's Application and the arguments and evidence of responsive pleadings made pursuant to the Commission's procedures.<sup>51</sup> The Commission could weigh the evidence and claims advanced by SBC against the contrary evidence and claims presented by opposing parties, and render its decision within the 90-day deadline. But SBC does not want to play by those rules. SBC instead favors an *ad hoc* approach to the review process — if it makes the assessment that the facts and arguments are not going its way as the decision deadline approaches, then it seeks to “restart the clock” so that it can try to tip the balance back in its favor.

These tactics followed by SBC tax the Commission's resources and place unfair burdens on interested parties. SBC's decision to add another layer to the record (for the sole purpose of trying to improve its own chances of success in the proceeding) interferes with the Commission's efforts to follow an orderly procedure and arrive at a decision, based upon all the parties' best evidence, within the prescribed decisional time frames. Interested parties who have already made their case for denying the Application are faced with the additional burden and expense of again assessing and commenting on the deficiencies of SBC's arguments and evidence after SBC has attempted to shift the target in its Supplemental Application.

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<sup>51</sup> See Public Notice, “Updated Filing Requirements for Bell Operating Company Applications under Section 271 of the Communications Act,” DA-99-1994, Sept. 28, 1999.

In these circumstances, Pilgrim disagrees with SBC's claim that it would serve no good purpose to start the process again. Procedural fairness would be better served by giving SBC the choice of either putting its best case forward and awaiting a Commission decision (without submitting any supplemental applications), or, if it believes the tide is going against it, withdrawing its application and refile. In this latter case, SBC should be barred from an immediate refile, but rather should be required to wait for a period of one year before refile. Rather than causing "needless delay,"<sup>52</sup> such an approach would force some discipline on Bell operating companies such as SBC who are intent upon seeking authority to provide long distance service even when the evidence does not support their case, and it would also provide greater procedural and administrative certainty, ease the Commission's administrative burdens, and spare interested parties from the needless burden and expense of scrambling to react each time SBC seeks to rearrange the deck chairs of its case.

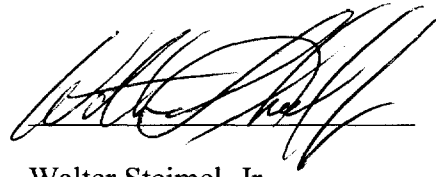
## **V. CONCLUSION**

For the reasons set forth above, the Commission should deny the SBC application for authorization to provide in-region, interLATA service in the State of Texas, pursuant to Section 271 of the Communications Act. As the comments addressing SBC's Supplemental Application have convincingly demonstrated, SBC has not made the required showings under Section 271, and the Commission therefore must act to protect consumers and competition in the State of

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<sup>52</sup> SBC Supplemental Application at 2.

Texas by denying SBC's Application. A prerequisite for any grant of the Application must be a demonstration by SBC that it is committed to providing competitors like Pilgrim with non-discriminatory, real-time access to billing name and address, 900 call blocking information, and other customer and billing data.

A handwritten signature in black ink, appearing to read 'Walter Steimel, Jr.', written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I, Joelle Zajk, a Professional Assistant with the law firm of Greenberg Traurig, LLP, hereby certify that on May 19, 2000, a true and correct copy of the foregoing REPLY COMMENTS OF PILGRIM TELEPHONE, INC., were served by hand delivery (except as otherwise noted) upon the following:


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